Supreme Court, U.S.
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Case No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2005

In re

PATRICK J. SMITH,

Petitioner,

Original Proceeding

PETITION FOR WRIT OF HABEAS CORPUS

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A. QUESTIONS PRESENTED FOR REVIEW

1. Whether *Crawford v. Washington*, 541 U.S. 36 (2004) is a "watershed" change of the law to which Petitioner would have the right of retroactive application, an issue over which the circuits differ.

B. PARTIES INVOLVED

The parties involved include James V. Crosby, Jr. as Secretary, Department of Corrections, State of Florida.

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PETITION FOR WRIT OF HABEAS CORPUS

The Petitioner, Patrick J. Smith, respectfully prays the Court to issue its writ of habeas corpus to release Petitioner from the custody of the Department of Correction State of Florida.

D. CITATION TO OPINION BELOW

Smith v. Crosby, 61 Fed. Appx. 670 (11th Cir. 2003).

E. BASIS FOR JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked pursuant to 28 U.S.C. § 2241(c)(3) to determine whether the Petitioner is in custody in violation of the Constitution or laws or treaties of the United States.

F. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Constitutional Provisions

This case requires interpretation and application of Amendment VI to the Constitution of the United States, which provides in pertinent part that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with witnesses against him."

2. Statutory Provisions

28 U.S.C. § 2241(a) states, "writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the

district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had."

18 U.S.C. § 2241(c)(3) states, "the writ of habeas corpus shall not extend to a prisoner unless he is in custody in violation of the Constitution or laws or treaties of the United States."

G. STATEMENT OF THE CASE

1. Course of Proceedings Below.

On 07 December 1996, the Petitioner, Patrick Joseph Smith, a juvenile, was arrested in Okaloosa County, Florida. On 13 January 1997, a two count indictment was returned against Petitioner Smith charging first degree murder with a weapon and robbery with a firearm. (S1-014).[1]

A jury trial took place between 12 January and 16 January 1998. The state court jury returned a verdict of guilty

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[1] "S" will denote the state court record on appeal with volume and page number.

as charged on both counts on 16 January 1998. (S1-124-125). Mr. Smith was sentenced to life in prison without the possibility of parole as to count one and nineteen years and two months in prison on count two. (S2-221-230).

Petitioner Smith took a direct appeal to the Florida District Court of Appeal, First Appellate District, wherein he raised an error pursuant to *Bruton v. United States*, 391 U.S. 123 (1968). In a published opinion, *Smith v. State*, 746 So. 2d 1162 (Fla. 1st DCA 1999), the state appellate court held the admission of the redacted statement of the codefendant incriminating Petitioner Smith violated the Confrontation Clause, but the constitutional violation was harmless error. Petitioner Smith sought review of the First District Court of Appeal's decision in the Supreme Court of Florida but the Supreme Court of Florida declined to grant review.

On 05 February 2002, Petitioner Smith filed a petition for federal habeas corpus relief under 28 U.S.C. § 2254. In the

petition, Mr. Smith argued that the admission of the "redacted" statement of Harry Tipton, especially in the manner in which it was accomplished,[2] denied him of his right to confront the witnesses against him and denied him a fair trial. Petitioner Smith also alleged that the subsequent affirmance of his conviction by the state appellate court was founded on an unreasonable application of the harmless error standard.

On 17 April 2002, the United States District Court for the Northern District of Florida, Hon. Roger Vinson, denied relief. Petitioner Smith timely sought a certificate of appealability, which was denied by the district court. The Eleventh Circuit Court of Appeals granted a certificate of appealability on the issue of "[w]hether the district court correctly denied [Petitioner Smith's] 28 U.S.C. § 2254 habeas

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[2]The state prosecutor in the presence of the jury stated: Judge, only all the references to [Petitioner] Patrick Smith have been removed." (S6-740) The state court judge stated to the jury, "these are matters in which Patrick Smith's name is mentioned, and we're keeping his name out from your hearing."